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No. 85-1138

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT L. KENT, JR.,
Petitioner,

vs.

SANBORN COOPERATIVE GRAIN COMPANY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals
For the Seventh Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a creditor - bidder - tenant is required to appeal an order confirming sale of leased property by a railroad reorganization trustee prior to the time that the Reorganization Court has determined whether an Iowa rent control statute applies to the ownership of the property by the third party following the Trustee's conveyance.

2. Whether a purchaser of Iowa real estate from a railroad reorganization trustee is given a federal exemption from an Iowa rent control statute.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	iii
Table of Authorities	iv
Opinions Below	1
Statement of the Case	2
I. The Facts	2
II. Opinion of the District Court	3
III. Opinion of the United States Court of Appeals for the Seventh Circuit	4
Reasons Why the Writ Should be Denied	5
I. The decision of the Court of Appeals does not conflict with decisions of other Circuits as alleged in the Petition	5
II. The decision of the Court of Appeals does not affect the finality of bankruptcy sales as alleged by Petitioner	6
III. The Court of Appeals correctly held that the Bankruptcy Code would not give Petitioner immunity from Iowa's rent control statute following his purchase because he purchased the Iowa real estate from the Trustee rather than a railroad not in reorganization	6
Conclusion	9
Appendix:	
Iowa Code Section 327G.62 (1981) (Prior to 1982 Amendment)	A-1

TABLE OF AUTHORITIES

Page

Cases:

Chicago and North Western Transportation Company v. Kalo Brick & Tile Company, 450 U.S. 311 (1981) 8

Chicago, Rock Island and Pacific Railroad Company, Appeal of Farmers Cooperative Elevator, Rake, Iowa, 753 F.2d 58 (7th Cir. 1985) 3

Ferguson v. Illinois Central Railroad Co., 210 N.W. 604 (Iowa 1926) 9

International Manufacturing Co. v. Landon, Inc., 327 F.2d 824 (9th Cir. 1964) 6

Matter of Boston & Marine Corp., 596 F.2d 2 (1st Cir. 1979) 5

NLRB v. Bildisco and Bildisco, 104 S.Ct. 1188 (1984) .. 8

New Haven Inclusion Cases, 399 U.S. 392 (1970) 7

Ohio v. Kovacs, 105 S.Ct. 705 (1985) 7

Perez v. Campbell, 402 U.S. 649 (1971) 8

Statutes:

Section 327G.62 of the Iowa Code ..... *passim*

Section 327G.78 of the Iowa Code 3,5

House File 2334, Sixty-Ninth General Assembly of the State of Iowa, 1982 Session 3,5

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Because the decision of the United States Court of Appeals for the Seventh Circuit in this case follows applicable rulings of this Court and involves none of the criteria warranting review, Respondent Sanborn Cooperative Grain Co. (Sanborn) respectfully requests that this Court deny the Petition of Robert L. Kent, Jr. (Kent) for a writ of certiorari.

OPINIONS BELOW

The opinion of the United States Court of appeals for the Seventh Circuit is reported as *Chicago, Rock Island and Pacific Railroad Company, Appeal of Sanborn Cooperative Grain Co.*, 772 F.2d 299 (7th Cir., 1985). The Seventh Circuit reversed the

unreported decision of the United States District Court for the Northern District of Illinois. The two opinions appear as A-3-10 and A-11-16, respectively, to the Petition.

STATEMENT OF THE CASE

Petitioner seeks review of a decision holding that real estate purchased by the Petitioner from the Trustee of the Chicago, Rock Island and Pacific Railroad Company is not exempt from application of an Iowa rent control statute, Section 327G.62 of the Iowa Code.

I. The Facts

The pertinent facts of this case are those found in the Seventh Circuit's decision for this case. *Chicago, Rock Island and Pacific Railroad Company, Appeal of Sanborn Cooperative Grain Co.* (772 F.2d 299, 301, Pet. A-4). Sanborn operated a grain elevator at Melvin, Iowa, on land which it leased from the Chicago, Rock Island and Pacific Railroad Company. Following the Rock Island's reorganization under the Bankruptcy Act, Sanborn continued to lease the real estate from the railroad's Trustee.

During the long term it had leased the real estate from the railroad, Sanborn erected improvements on the leased land. After the Trustee refused Sanborn's offer to purchse the real estate which it was leasing, the Trustee sold the real estate to the Petitioner. In his Petition, Kent discusses the Iowa legislature's 1982 amendments to Iowa Code Section 327G.62. As shown by Iowa Code section 327G.62 prior to its 1982 amendments. (Opposition Appendix), the purpose of the 1982 amendment was to grant Iowa elevators, such as Sanborn, that had erected improvements on leased property during railroad ownership the same continuing rights if the railroad sold the leased real estate.

In his Petition, Kent alleges that the order confirming the Trustee's sale to Kent on November 1, 1983, was an adjudica-

tion on the merits of whether Kent's ownership of the real estate would be free from Iowa rent control, Section 327G.62. As the Court of Appeals found, House File 2334, Iowa General Assembly, contained multiple provisions; and prior to November 1, 1983, the only litigation before the Reorganization Court had concerned new section 327G.78 of the Iowa Code.

Petition also refers to proceedings before the Iowa Department of Transportation under Section 327G.62. The Iowa Department of Transportation's rent order based Sanborn's rent on the value of the unimproved real estate. The Iowa agency's rent order, using the vacant land value as the basis of rent, is the same approach approved by the Seventh Circuit in a related rent case involving the Rock Island Trustee. *Chicago, Rock Island and Pacific Railroad Company, Appeal of Farmers Cooperative Elevator, Rake, Iowa,* 753 F.2d 58, 60 (7th Cir. 1985).

In its opinion for this case, the Seventh Circuit stated that the issues concerning the constitutionality of the Iowa rent control statute, Section 327G.62, were properly determined by judicial review provided by the Iowa courts and the issues of State confiscation, regulation or taking could be raised there "subject to appropriate subsequent federal review". (772 F.2d 299, 303, Pet. A-9).

II. Opinion Of The District Court

In its opinion, the District Court stated that the issues were (1) whether its reference to House File 2334 in its confirmation order was "intended" to free Kent from application of the Iowa rent control statute and (2) whether Section 327G.62 is preempted by federal bankruptcy law. (Memorandum, Opinion and Order, Pet. A-14).

The District Court admitted that its "reference to House File 2334 in Order No. 621 is not a model of clarity", but found that the reference was "broad enough to encompass *all* of House File 2334." (Memorandum, Opinion and Order, Pet. A-14).

On the second issue, the Court conceded that this "case does not directly involve the Trustee; rather it involves, in its purest sense, a private rental dispute between a property owner and his tenant." (Memorandum, Opinion and Order, Pet. A-14). The district court accepted Kent's testimony that the Trustee's assurances to him that the Iowa rent control statute would not apply affected his decision to purchase the Iowa property. Also, the court adopted the Trustee's argument that application of the Iowa rent control statute would lower the value of the Trustee's Iowa property. (Memorandum, Opinion, and Order, Pet. A-15).

III. Opinion Of The United States Court Of Appeals For The Seventh Circuit

The Seventh Circuit reversed the conclusion of the district court on the issue of federal bankruptcy preemption, noting:

> It is for state law and policies to determine what degree of regulation of rents is appropriate to protect the public interest and the economic welfare of the region vitally dependent upon farming and the efficient functioning of grain elevators in order to assure its meaningful participation in the national and world market for agricultural products. (772 F.2d 299, 303, Pet. A-8).

The Appeals Court did not find the required federal interest or conflict with state law to justify preemption.

The Appeals Court also found that the present appeal was not an appeal from the court's November 1, 1983, order confirming sale, but was an appeal from the court's order of August 21, 1984, adjudicating for the first time that Iowa real estate purchased from the Trustee was, in the hands of the Trustee's purchaser, exempt from the Iowa rent control statute. (772 F.2d 299, 301, Pet. A-4-5).

REASONS WHY THE WRIT SHOULD BE DENIED

I. The Decision Of The Court Of Appeals Does Not Conflict With Decisions Of Other Circuits As Alleged In The Petition.

Petitioner argues that the district court's confirmation order of November 1, 1983, was an adjudication of the application of the Iowa rent control statute and whether the statute would be enforceable against Petitioner following his purchase from the Trustee.

The Court's confirmation order sold the leased property to Petitioner "free of liens and other claims (including tax liens or claims and any claim or right of any person, firm, corporation or governmental entity under House File 2334, Sixty-Ninth General Assembly of Iowa)." (Order No. 621, Pet. A-20). The district court admitted that its reference to House File 2334 "is not a model of clarity." (Memorandum, Opinion and Order, Pet. A-14). The only litigation in the reorganization court before November 1, 1983, on House File 2334, concerned another section of the Statute (Iowa Code Section 327G.78). The application and constitutionality of the 1982 amendment to Section 327G.62 had not been litigated.

To support his argument that the decision of the Court of Appeals conflicts with decisions from other circuits, Petitioner cites *Matter of Boston & Marine Corp.*, 596 F.2d 2, 9 (1st Cir. 1979). In that case, this Court found that the State of New Hampshire could not raise arguments in subsequent litigation which "go to the merits of issues decided long ago by the reorganization court and the ICC." *Matter of Boston & Marine Corp.*, 596 F.2d 2, 9 (1st Cir. 1979). As the Court of Appeals found in the present case, the issue of constitutionality of Section 327G.62 and whether Petitioner purchased real estate from the Trustee free of the state rent statute had not been previously determined on the merits. Accordingly, the Court of Appeals decision in this case is not in conflict.

Also, the Court of Appeals decision does not permit a collateral attack on the November 1, 1983, Order and is not in conflict with *International Manufacturing Co. v. Landon, Inc.*, 327 F.2d 824 (9th Cir. 1964). As the Seventh Circuit found, the present appeal does not challenge the validity of the Trustee's sale to Petitioner. (772 F.2d 299, 303, Pet. A-8-9). The Seventh Circuit's opinion for this case does not conflict with the Ninth Circuit's opinion as alleged.

II. The Decision Of The Court Of Appeals Does Not Affect The Finality Of Bankruptcy Sales As Alleged By Petitioner.

The Petitioner argues that the Court of Appeals decision "creates substantial uncertainty as to the title conveyed by bankruptcy trustees." (Pet. 5). Sanborn did not appeal the confirmation order of November 1, 1983, and does not dispute Petitioner's ownership of its leased real estate at Melvin, Iowa.

Following Kent's purchase of the real estate from the Trustee, Sanborn requested that the Iowa Transportation Regulation Authority determine the rent payable to Kent as provided by Section 327G.62 of the Iowa Code. At that point, Kent petitioned the Reorganization Court to declare that he had purchased the Iowa real estate free of Iowa's rent control statute. The Court of Appeals agreed that the present appeal is not collateral and does not attack the November 1, 1983, Order confirming the sale to Kent. (772 F.2d 299, 303, Pet. A-8-9).

III. The Court Of Appeals Correctly Held That The Bankruptcy Code Would Not Give Petitioner Immunity From Iowa's Rent Control Statute Following His Purchase Because He Purchased The Iowa Real Estate From The Trustee Rather Than A Railroad Not In Reorganization.

The Seventh Circuit correctly found that Iowa's rent control statute was not preempted by federal bankruptcy law when the

dispute was whether Section 327G.62 of the Iowa Code would apply to a rent dispute between Sanborn and Kent *following* Kent's purchase of the real estate from the Trustee. Sanborn agreed to allow the district court to fix the rent owed by it to the Trustee which accrued prior to the November 1, 1983, sale to Kent by the Trustee. Sanborn did not seek application of section 327G.62 of the Iowa Code, 1985, to the rent it would owe the Trustee prior to Kent's purchase. (772 F.2d 299, 302, Pet. A-6-7).

Kent alleges that the Appeals Court employed "an improper standard of review." (Pet. 6). The discretion given to the district court as a reorganization court concerns the lower court's findings of fact. This Court has held that a railroad reorganization court's findings of fact are given special weight because of the lower court's familiarity with the reorganization case. *New Haven Inclusion Cases,* 399 U.S. 392, 463 (1970). The weight given the district court's findings of fact did not prevent the appeals court from reviewing the legal issue of federal preemption.

Petitioner compares the present case to *Ohio v. Kovacs,* 105 S.Ct. 705 (1985). In that case, this Court held that a debtor under Chapters 7 and 11 of the Bankruptcy Code was discharged from a state obligation that it clean up a waste site or be liable for damage assessments if it failed to do so. *Ohio v. Kovacs, supra,* concerns the issue of "debt" and the discharge of the debtor. The case does not concern application of state environmental laws to real estate in the hands of a purchaser from the debtor. This Court specifically held that bankruptcy would not prevent an "injunction against bringing further toxic wastes on the premises or against any conduct that will contribute to the pollution of the site or the State's waters." 105 S.Ct. 705, 711. Accordingly, this Court did not hold that bankruptcy would grant continuing immunity to real estate from further enforcement of a State's environmental laws. As applied to this case, while there might be some question whether

Iowa could regulate the rent between Sanborn and the Trustee during the Trustee's ownership, federal law does not prohibit Iowa from regulating the real estate *after* its purchase by Kent and it passes from the Trustee's control. In addition, this Court's concurring opinion restates prior law that the determination of property rights is left to state law. 105 S.Ct. 705, 712 (O'Connor, J., concurring).

The Seventh Circuit's opinion does not contradict this Court's holding in *NLRB v. Bildisco and Bildisco,* 104 S.Ct. 1188 (1984). In that case, this Court considered whether a debtor in possession under Chapter 11 of the Bankruptcy Code could reject a collective bargaining agreement as an executory contract. In that case, this Court did not give any rejection rights *after* the bankruptcy when the business was operated by a purchaser from the Trustee. By citing the above cases of this Court, Petitioner seeks to cloak himself with limited federal protection from state law granted the Trustee or debtor in bankruptcy.

The decision of the Court of Appeals for this case does not conflict with this Court's holding in *Chicago and North Western Transportation Company v. Kalo Brick & Tile Company,* 450 U.S. 311, 317 (1981). In *North Western Transportation* the Court found a direct conflict between federal and state regulation of railroads and the ability of shippers to claim damages in railroad abandonment. There is no federal rent control statute to conflict with Iowa's statute. Traditionally and constitutionally, the regulation of real estate ownership is left to the individual states. Neither does the Seventh Circuit's opinion conflict with *Perez v. Campbell,* 402 U.S. 637, 649 (1971). Section 327G.62 of the Iowa Code does not interfere with the reorganized railroad's ability to have a "fresh start."

Sanborn's argument is that the Bankruptcy Trustee could receive a higher sale price for Iowa real estate if the Trustee could sell the real estate free from Iowa's rent control statute.

As the Court of Appeals noted, the fact that real estate could be sold for more if exempted from state regulation "does not establish an overriding federal policy prohibiting traditional forms of State regulation of rents." (772 F.2d 302, Pet. A-6).

In *Ferguson v. Illinois Central Railroad Co.*, 210 N.W. 604, 607 (Iowa 1926), the Iowa Supreme Court did not find Section 327G.62 to be unconstitutional. The Court found that there was not sufficient public interest in the regulation of rent charged to a coal shed owner to justify State rent control. As the Court of appeals noted in this case, Iowa's right to regulate grain elevators has been established in law for some time. (772 F.2d 299, 302, Pet. A-6).

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

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Iowa Code § 327G.62 (1981)

327G.62 Buildings on railroad lands.

When a disagreement arises between a railroad corporation and the owner of any building used for receiving, storing, or manufacturing any article of commerce transported or to be transported, situated on the railroad right of way or any land owned or controlled by the railroad corporation for railroad purposes, as to the terms and conditions on which the same is to be continued thereon or removed therefrom, such railway corporation or person may make written application to the board and the board shall hear and determine such controversy and make such order in relation thereto as shall be just and equitable between the parties, which order shall be enforced in the same manner as other orders of the board.

(Prior to 1982 Amendment.)